

GAHC010280982023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./4521/2023

SUJAL ALI
S/O SAHADAT ALI
VILL- SURJYA NAGAR, BY LANE NO. 3, P.S. SATGAON
DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 14.03.2024

Heard Mr. R. Ali, learned counsel for the accused-petitioner as well as Mr. D.P. Goswami, learned Additional Public Prosecutor for the State.

2. This is an application filed under **Section 439 Cr.P.C.**, seeking bail

by the accused-petitioner, namely, **Sujal Al**, in connection with **Sessions Case No. 200/2023(arising out of Dispur P.S. Case No. 2479/2022)**, registered under **Section 392/302/34 IPC r/w Section 25(1-A) of Arms Act.**

3. An FIR was lodged before the Dispur Police Station on 21/11/2022 alleging inter alia that on the same day elder brother of the informant Ranjit Bora who was on his way to Panjabari from Kahilipara in his vehicle bearing No AS01BH5022 was shot by two unidentified miscreants near Purabi Dairy Campus, Panjabari. He later succumbed to his injuries.

4. It is submitted by the learned counsel for the petitioner that the petitioner was arrested on 05/02/2023 in connection with Mukalmua PS Case no 42/2022 u/s 395 IPC merely on suspect. While the petitioner was in custody, he was shown arrest in connection with the instant case on 11/02/2023 and since then he has been languishing in jail hazot.

5. It is also the submission of the learned counsel for the petitioner that the investigation of the case has been completed and the charge sheet has already been laid against the petitioner along with four other accused and the case is pending for trial.

6. It is also submitted by the learned counsel for the petitioner that there is no eye witness to the incident and there is no direct evidence against the present petitioner. The petitioner is not named in the Fir. He has been arrested purely on suspicion. It is further submitted that as the trial of the case has been started and if the petitioner is not released on bail, he would be deprived from defending his case in proper manner and he will be seriously prejudiced. Under such backdrop, learned counsel for the petitioner

prays to release the accused/petitioner on bail.

In support of his submissions learned counsel for the petitioner has relied on the following case laws –

- a. (2012) AIR (SC) 830 (Sanjay Chandra vs. CBI)
- b. (2005) 1 GLR 121 (Birajit Sinha and others vs. State of Tripura)
- c. (2017) 5 SCC 218 (Manoranjana Singh @ Gupta vs. CBI)
- d. Bail Application 1678/2022

7. On the other hand, learned Additional Public Prosecutor has submitted that the petitioner is the habitual offender. Against the petitioner, so many cases are pending in different courts of Assam. He has committed dacoity and murder in several cases vide Sathgaon P.S. case No. 43/2019, Changsari P.S. Case No. 462/2022 and North Lakhimpur P.S. Case No.146/2022 are some of them. If the petitioner is released on bail, there is every possibility of committing such type of offence again. As such the petitioner may not be released on bail.

8. I have considered the submissions of the learned counsel for the parties. I have also perused the scan copy of the Trial court record.

9. Before considering the rival submissions on behalf of the respective parties, it is apt to rely on few decisions, how to exercise the discretionary power for grant or refusal of bail.

10. In the case of ***Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P., (1978) 1 SCC 240***, it was held that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. The nature of the charge is a vital factor and the nature of the evidence is also pertinent. The severity of the punishment to which the accused may be liable if

convicted also bears upon the issue. Another relevant factor is whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being. The Court has also to consider the likelihood of the applicant interfering with the witnesses for the prosecution or otherwise polluting the process of justice. It is further observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

11. In the case of State of ***Maharashtra v. Sitaram Popat Vetal, (2004) 7 SCC 521***, it was observed that while granting of bail, the following factors among other circumstances are required to be considered by the Court :

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;
2. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and
3. Prima facie satisfaction of the court in support of the charge.

It was further observed that any order dehors such reasons suffers from non-application of mind.

12. In the case of ***Mahipal v. Rajesh Kumar (2020) 2 SCC 118***, where the High Court released the accused on bail in a case for the offence under Section 302 of the IPC and other offences recording the only contention put forth by the counsel for the accused and further recording that "taking into account the facts and circumstances of the case and without expressing the opinion on merits of case, this Court deems fit just and proper to enlarge/release the accused on bail", while

setting aside the order passed by the High Court granting bail, it was observed by the Hon'ble Supreme Court as under -

“11. Essentially, this Court is required to analyse whether there was a valid exercise of the power conferred by Section 439 CrPC to grant bail. The power to grant bail under Section 439 is of wide amplitude. But it is well settled that though the grant of bail involves the exercise of the discretionary power of the court, it has to be exercised in a judicious manner and not as a matter of course.....”

13. In the case of ***Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010***, it was observed as follows -

“.....It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced;

and

(viii) danger, of course, of justice being thwarted by grant of bail.

It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal.”

14. Reverting to the present case, the bail was sought for the offence u/s 392/302/396/120(B)/34 IPC read with section 25(1A)/ 27 of Arms Act and charge was framed accordingly under the said provisions of law.

15. In view of the aforesaid legal propositions as well as the nature of accusation and the severity of punishment in case of conviction and also reasonable apprehension of the witnesses being influenced or apprehension of threat to the complainant, this court is not inclined to grant bail to the accused/petitioner.

16.Hence, prayer for bail is rejected.

17. Bail application is disposed of accordingly.

JUDGE

Comparing Assistant